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NOTE AND COMMENT

AMERICAN BAR ASSOCIATION MEETING

The Executive Committee at its meeting in New York on December 28, determined to hold the annual meeting of the American Bar Association at Portland, Maine, on Monday, Tuesday and Wednesday, August 26, 27 and 28, 1907. The reason for selecting Monday, Tuesday and Wednesday is that the International Law Association is considering holding its meeting in America this year, and the suggestion has been made to that body to hold its meeting in Portland on the last three days of said week.

DISBARMENT OR SUSPENSION OF ATTORNEY.—The decision of the Supreme Court of Oregon in the case of *State ex rel Grievance Committee of State Bar Association* v. *Tanner,* rendered Jan. 12, 1907, 88 Pac. Rep. 301, is of sufficient importance to merit brief notice. The proceeding was instituted by the grievance committee of the State Bar Association for the removal from practice of the defendant, an attorney at law, under a statute of the State that provides for the removal or suspension of an attorney from practice by the Supreme Court "upon his being convicted of a felony or of a misde-

meanor involving moral turpitude." The information alleged that, on a date named, a United States grand jury returned an indictment against defendant, charging him with the crime of perjury; that to this indictment he entered a plea of guilty, but that subsequently, and before further steps had been taken, the indictment, on motion of the government, was dismissed, for the reason that the defendant had been pardoned by the President of the United States. It was insisted in the information that the plea of guilty amounted to a conviction of a felony, from the consequences of which the defendant was not absolved by the subsequent pardon. The defendant answered the information admitting the facts but contesting the claim that the plea of guilty, under the circumstances, amounted to a conviction of a felony. By way of further and separate answer, the defendant alleged that the perjury with which he was charged, was not committed in the actual trial of any cause and that it did not occur in connection with any professional matter or with the discharge of any professional duty to any court or client, but during a hearing before a United States grand jury, sitting to investigate certain alleged criminal acts of John H. Mitchell, Senator of the United States, before which defendant had been called as a witness. He admitted that in testifying before said grand jury to facts other than those which were the strict and absolute truth, he made a great mistake and was guilty of a great wrong, but by way of extenuation of the offense he submitted the following: That he had for years been a close and intimate friend of Senator Mitchell and his law partner since 1890; that the senator assured him that the charges were the result of political intrigue and the persecution of his enemies in the political faction opposed to him; that he represented to the defendant that, "the practice of taking money for appearances before the department had at one time been customary and proper, and that the charges themselves were simply an accusation of a breach of the written law, and not a breach of any inherent morality," and that he implored him "in a most pathetic manner to stand between him and disgrace and ruin in his old age, after a lifetime of public service," representing that his fate was in the hands of defendant. And the defendant further stated by way of answer and extenuation, that though he protested until the last against what he was asked to do, he "did not have the strength to resist the most heartrending pleadings of a man like Senator Mitchell to whom" he "was tied by bonds of long association, obligation, and most kindly feeling," and that it was under such circumstances that, as a citizen, he appeared before the said grand jury, and, rather than seem a traitor to Senator Mitchell, testified that the partnership agreement between himself and Senator Mitchell was to the effect that all moneys paid for services in the land department belonged to defendant individually, whereas, in fact, they belonged to both jointly. He disclaimed having anything to gain by his false testimony, and insisted "that his conduct was influenced wholly and entirely by a feeling of loyalty toward Senator Mitchell and a great pity for his distress." The defendant showed further "that afterwards he appeared in open court, the said grand jury being present, and told the whole truth, exactly as the facts warranted, and that he so testified when sworn as a witness, during the course of the trial."

It appeared that defendant had practiced law in the city of Portland for more than twenty-five years and that never before had his standing as a man or as a lawyer been the subject of criticism. It was stipulated that the answer of defendant should be treated as evidence, and the case was submitted upon the information, the answer, and a copy of the testimony of defendant as given on the trial of *United States* v. *Mitchell* in the federal court.

After suggesting that it was doubtful if a mere plea or verdict of guilty could be regarded as a conviction within the meaning of the statute under which the proceeding was brought and citing authorities in support, but without deciding the question, as the attitude of the defendant in waiving technical defenses and freely admitting his guilt, made a decision unnecessary, the court said by way of conclusion and judgment: "There are circumstances which call for the exercise of clemency, but that does not justify the offense. The crime with which the defendant is charged, and the commission of which he admits, was a serious one, deliberately and intentionally committed, and the court would be unmindful of the duty it owes to itself, to the profession and to the public, if it allowed it to go unrebuked. Proceedings for the disbarment of an attorney, however, are not for the purpose of punishing him for the commission of a crime. That matter is left to the criminal courts. The objects of the proceedings here are to uphold the dignity and purity of the profession, protect the courts, preserve the administration of justice, and protect clients, and it is believed that it is not necessary, in order to accomplish this purpose, that the defendant should be permanently disbarred, but he will be suspended for a period of ninety days."

The court was certainly lenient with the defendant. There were, to be sure, extenuating circumstances, yet the offense was a grave one, particularly in view of the fact that it was committed by a lawyer, who above all men should realize, and by his example and teaching enforce, the fact that the integrity of our judicial system depends to a very large extent upon a general recognition of, and respect for, the sanctity of an oath. While it is undoubtedly true that proceedings for disbarment are not taken primarily for the punishment of the attorney, but rather for the purpose of sustaining the profession in its dignity and purity, yet the notion that they are not taken for punishment ought never to become so prominent in the mind of the court as practically to defeat the real object of the proceedings. It may, perhaps, be doubted if the order in this case will serve in any considerable degree "to uphold the dignity and purity of the profession, protect the courts, preserve the administration of justice, and protect clients," when it is seen that it was made in the case of an attorney who had been guilty of the crime of perjury.

It may be of interest to call attention to other cases in which mitigating circumstances have been considered by the courts in connection with proceedings for disbarment. *In re Stephens,* 84 Cal. 77, 24 Pac. Rep. 46, was a proceeding in the Supreme Court of the State for the disbarment of respondent for unprofessional conduct in encouraging the prosecution of an action and then, without any change of mind as to the guilt or innocence of the accused, assuming his defense. It was urged in mitigation that the evidence as to the graver features of the charge was conflicting and that the respondent was

led to take the course that he did through concern felt for a brother who was accused of a crime and whose case would be affected by respondent's attitude. The court held that, while the respondent had been clearly guilty of unprofessional conduct, the offense, under the circumstances of the case, should not be regarded as of a sufficiently grave nature to call for total disbarment, but that respondent should be suspended from practice for a period of six months, an order that was subsequently modified somewhat in respondent's favor on account of a petition from the bar of the county in which he had practiced. In *People* v. *McCabe,* 18 Col. 186, 32 Pac. Rep. 280, 36 Am. St. Rep. 270, 19 L. R. A. 231, proceedings for disbarment were taken against defendant for advertising for divorce business. It was shown in mitigation that defendant advertised in entire ignorance that it was wrong; that he ceased so to do in deference to the court upon the commencement of the proceedings, and that if the court should adjudge such advertising to be wrong or to be malconduct in office as an attorney, within the meaning of the statute, he would cheerfully abide by and obey the directions of the court. In view of the showing, the court concluded that defendant should be suspended from practice for the period of six months and until all costs of the proceedings should be paid by him. See, also, *People* v. *Taylor,* 32 Col. 250, 75 Pac. Rep. 914. Where an attorney altered an undertaking, and without procuring its re-execution or re-acknowledgment, used it upon an application for an attachment, he was held guilty of professional misconduct, but in view of his youth and inexperience (he had been admitted to the bar less than a year), the court concluded that "he would be sufficiently punished and the honor of the profession vindicated" by a judgment of suspension from practice for two years. *In re Goldberg,* 79 Hun, 616, 29 N. Y. Supp. 972. In *People* v. *George,* 186 Ill. 122, it was held that an attorney who had been convicted of a felony should be disbarred, although pardoned by the Governor of the State, the reason being that the pardon does not restore the "good moral character" required by the statute of members of the bar. See, also, *People* v. *Gilmore,* 214 Ill. 569.

As compared with the orders in the foregoing cases, the order in the case under review was lenient in the extreme, and it will doubtless be regarded by many as altogether too lenient. H. B. H.

IS THE PROPERTY OWNER NEGLIGENT IF HE FAILS TO EXERCISE REASONABLE CARE TO PREVENT AN INJURY TO AN INFANT TRESPASSER?—This vital and important question has recently been answered in the negative by the Supreme Court of Errors of Connecticut, *Wilmot* v. *McPadden,* 65 Atl. R. 157. The facts are these. Defendants were demolishing an old dilapidated house on a lot entirely uninclosed. It was in a populous city and plaintiff's intestate, a boy seven and one-half years old, lived in the next house. Saturday night there remained of the house only the foundations, the first floor and two brick chimneys. No attempt of any kind was made to keep people away. On Sunday afternoon the intestate and some other boys were playing there and a chimney fell, killing him. There was some evidence tending to show that intestate and another boy, somewhat older, had pried some bricks out of the